

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 869

Introduced by Agriculture Committee: Kremer, 34, Chairperson;
Burling, 33; Chambers, 11; Cunningham, 40;
Erdman, 47; Mossey, 3; Preister, 5; Vrtiska, 1

Read first time January 7, 2004

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 2-945.01,
2 2-953, 2-954, 81-201, and 81-201.05, Reissue Revised
3 Statutes of Nebraska, and section 2-958, Revised Statutes
4 Supplement, 2002; to change noxious weed control
5 provisions; to create a fund; to authorize fund
6 transfers; to harmonize provisions; and to repeal the
7 original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-945.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-945.01. Sections 2-945.01 to 2-966 and sections 4 and
4 5 of this act shall be known and may be cited as the Noxious Weed
5 Control Act.

6 Sec. 2. Section 2-953, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 2-953. For purposes of the Noxious Weed Control Act:

9 (1) Person ~~shall mean~~ means any individual, partnership,
10 firm, limited liability company, corporation, company, society, or
11 association, the state or any department, agency, or subdivision
12 thereof, or any other public or private entity;

13 (2)(a) Control, with respect to land, ~~shall mean~~ means
14 the authority to operate, manage, supervise, or exercise
15 jurisdiction over or any similar power. The state or federal
16 government or a political subdivision shall not be deemed to
17 control land on which it has an easement as long as it does not
18 otherwise operate, manage, supervise, or exercise jurisdiction over
19 the land; and

20 (b) Control, with respect to weeds, ~~shall mean~~ means the
21 prevention, suppression, or limitation of the growth, spread,
22 propagation, or development or the eradication of weeds;

23 (3) County board ~~shall mean~~ means the county board of
24 commissioners or supervisors;

25 (4) Noxious weeds ~~shall mean~~ means and include any weeds
26 designated and listed as noxious in rules and regulations adopted
27 and promulgated by the director;

28 (5) Control authority ~~shall mean~~ means the county weed

1 district board or the county board if it is designated as the
2 control authority pursuant to section 2-953.01, which board shall
3 represent all rural areas and cities, villages, and townships
4 within the county boundaries; and

5 (6) Director ~~shall mean~~ means the Director of Agriculture
6 or his or her designated representative; and

7 (7) Weed management entity means an entity recognized by
8 the director as being established by and consisting of local
9 stakeholders, including tribal governments, for the purpose of
10 controlling or eradicating harmful, invasive weeds and increasing
11 public knowledge and education concerning the need to control or
12 eradicate harmful, invasive weeds.

13 Sec. 3. Section 2-954, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 2-954. (1) (a) The duty of enforcing and carrying out the
16 Noxious Weed Control Act shall be vested in the director and the
17 control authorities as designated in the act. The director shall
18 determine what weeds are noxious for purposes of the act. A list
19 of such noxious weeds shall be included in the rules and
20 regulations adopted and promulgated by the director. The director
21 shall prepare, publish, and revise as necessary a list of noxious
22 weeds. The list shall be distributed to the public by the
23 director, the Cooperative Extension Service, the control
24 authorities, and any other body the director deems appropriate.
25 The director shall, from time to time, adopt and promulgate rules
26 and regulations on methods for control of noxious weeds and adopt
27 and promulgate such rules and regulations as are necessary to carry
28 out the act. Whenever special weed control problems exist in a

1 county involving weeds not included in the rules and regulations,
2 the control authority may petition the director to bring such weeds
3 under the county control program. The petition shall contain the
4 approval of the county board. Prior to petitioning the director,
5 the control authority, in cooperation with the county board, shall
6 hold a public hearing and take testimony upon the petition. Such
7 hearing and the notice thereof shall be in the manner prescribed by
8 the Administrative Procedure Act. A copy of the transcript of the
9 public hearing shall accompany the petition filed with the
10 director. The director may approve or disapprove the request. If
11 approval is granted, the control authority may proceed under the
12 forced control provisions of sections 2-953 to 2-955 and 2-958.

13 (b) The director shall (i) investigate the subject of
14 noxious weeds, (ii) require information and reports from any
15 control authority as to the presence of noxious weeds and other
16 information relative to noxious weeds and the control thereof in
17 localities where such control authority has jurisdiction, (iii)
18 cooperate with control authorities in carrying out other laws
19 administered by him or her, (iv) cooperate with agencies of federal
20 and state governments and other persons in carrying out his or her
21 duties under the Noxious Weed Control Act, (v) with the consent of
22 the Governor, conduct investigations outside this state to protect
23 the interest of the agricultural industry of this state from
24 noxious weeds not generally distributed therein, (vi) with the
25 consent of the federal agency involved, control noxious weeds on
26 federal lands within this state, with reimbursement, when deemed by
27 the director to be necessary to an effective weed control program,
28 (vii) advise and confer as to the extent of noxious weed

1 infestations and the methods determined best suited to the control
2 thereof, (viii) call and attend meetings and conferences dealing
3 with the subject of noxious weeds, (ix) disseminate information and
4 conduct educational campaigns with respect to control of noxious
5 weeds, (x) procure materials and equipment and employ personnel
6 necessary to carry out the director's duties and responsibilities,
7 and (xi) perform such other acts as may be necessary or appropriate
8 to the administration of the act.

9 (c) The director may (i) temporarily designate a weed as
10 a noxious weed for up to eighteen months if the director, in
11 consultation with the advisory committee created under section
12 2-965.01, has adopted criteria for making temporary designations
13 and (ii) apply for and accept any gift, grant, contract, or other
14 funds or grants-in-aid from the federal government or other public
15 and private sources for noxious weed control purposes and account
16 for such funds as prescribed by the State Auditor.

17 (d) When the director determines that a control authority
18 has substantively failed to carry out its duties and
19 responsibilities as a control authority or has substantively failed
20 to implement a county weed control program, he or she shall
21 instruct the control authority regarding the measures necessary to
22 fulfill such duties and responsibilities. The director shall
23 establish a reasonable date by which the control authority shall
24 fulfill such duties and responsibilities. If the control authority
25 fails or refuses to comply with instructions by such date, the
26 Attorney General shall file an action as provided by law against
27 the control authority for such failure or refusal.

28 (2) (a) Each control authority shall carry out the duties

1 and responsibilities vested in it under the act with respect to
2 land under its jurisdiction in accordance with rules and
3 regulations adopted and promulgated by the director. Such duties
4 shall include the establishment of a coordinated program for
5 control of noxious weeds within the county.

6 (b) A control authority may cooperate with any person in
7 carrying out its duties and responsibilities under the act.

8 (3) (a) Each county board shall employ one or more weed
9 control superintendents. Each such superintendent shall, as a
10 condition precedent to employment, be certified in writing by the
11 federal Environmental Protection Agency as a commercial applicator
12 under the Federal Insecticide, Fungicide, and Rodenticide Act.
13 Each superintendent shall be bonded for such sum as the county
14 board shall prescribe. The same person may be a weed control
15 superintendent for more than one county. Such employment may be
16 for such tenure and at such rates of compensation and reimbursement
17 for travel expenses as the county board may prescribe. Such
18 superintendent shall be reimbursed for mileage at a rate equal to
19 or greater than the rate provided in section 81-1176.

20 (b) Under the direction of the control authority, it
21 shall be the duty of every weed control superintendent to examine
22 all land under the jurisdiction of the control authority for the
23 purpose of determining whether the Noxious Weed Control Act and the
24 rules and regulations adopted and promulgated by the director have
25 been complied with. The weed control superintendent shall: (i)
26 Compile such data on infested areas and controlled areas and such
27 other reports as the director or the control authority may require;
28 (ii) consult and advise upon matters pertaining to the best and

1 most practical methods of noxious weed control and render
2 assistance and direction for the most effective control; (iii)
3 investigate or aid in the investigation and prosecution of any
4 violation of the act; and (iv) perform such other duties as
5 required by the control authority in the performance of its duties.
6 Weed control superintendents shall cooperate and assist one another
7 to the extent practicable and shall supervise the carrying out of
8 the coordinated control program within the county.

9 (c) In cases involving counties in which municipalities
10 have ordinances for weed control, the control authority may enter
11 into agreements with municipal authorities for the enforcement of
12 local weed ordinances and may follow collection procedures
13 established by such ordinances. All money received shall be
14 deposited in the weed control authority fund.

15 Sec. 4. (1) The Noxious Weed and Invasive Plant Species
16 Assistance Fund is created. The fund may be used to carry out the
17 purposes of section 5 of this act. The State Treasurer shall
18 credit to the fund any money appropriated to the fund by the
19 Legislature and any money received as gifts or grants or other
20 private or public funds obtained for the purposes set forth in
21 section 5 of this act. Any money in the fund available for
22 investment shall be invested by the state investment officer
23 pursuant to the Nebraska Capital Expansion Act and the Nebraska
24 State Funds Investment Act.

25 (2) The director shall apply for, jointly with other
26 state, local, and private organizations that have an interest in
27 noxious weed and invasive plant management, a grant of at least two
28 hundred fifty thousand dollars from the Nebraska Environmental

1 Trust Fund prior to the application deadline for grants to be
2 awarded and funded in 2005.

3 Sec. 5. (1) From funds available in the Noxious Weed and
4 Invasive Plant Species Assistance Fund, the director may administer
5 a grant program to assist local control authorities and other weed
6 management entities in the cost of implementing and maintaining
7 noxious weed control programs and in addressing special weed
8 control problems. The director shall receive applications by local
9 control authorities and weed management entities for assistance
10 under this section and, in consultation with the advisory committee
11 created under section 2-965.01, award grants for any of the
12 following eligible purposes:

13 (a) To conduct applied research to solve locally
14 significant weed management problems;

15 (b) To demonstrate innovative control methods or land
16 management practices which have the potential to reduce landowner
17 costs to control noxious weeds or improve the effectiveness of
18 noxious weed control;

19 (c) To encourage the formation of weed management
20 entities;

21 (d) To respond to introductions or infestations of
22 invasive plants that threaten or potentially threaten the
23 productivity of cropland and rangeland over a wide area;

24 (e) To respond to introductions and infestations of
25 invasive plant species that threaten or potentially threaten the
26 productivity and biodiversity of wildlife and fishery habitats on
27 public and private lands;

28 (f) To respond to special weed control problems involving

1 weeds not included in the list of noxious weeds promulgated by rule
2 and regulation of the director if the director has approved a
3 petition to bring such weeds under the county control program;

4 (g) To conduct monitoring or surveillance activities to
5 detect, map, or determine the distribution of invasive plant
6 species and to determine susceptible locations for the introduction
7 or spread of invasive plant species; and

8 (h) To conduct educational activities.

9 (2) The director shall select and prioritize applications
10 for assistance under this section based on the following
11 considerations:

12 (a) The seriousness of the noxious weed or invasive plant
13 problem or potential problem addressed by the project;

14 (b) The ability of the project to provide timely
15 intervention to save current and future costs of control and
16 eradication;

17 (c) The likelihood that the project will prevent or
18 resolve the problem or increase knowledge about resolving similar
19 problems in the future;

20 (d) The extent to which the project will leverage federal
21 funds and other nonstate funds;

22 (e) The extent to which the applicant has made progress
23 in addressing noxious weed or invasive plant problems;

24 (f) The extent to which the project will provide a
25 comprehensive approach to the control or eradication of noxious
26 weeds;

27 (g) The extent to which the project will reduce the total
28 population or area of infestation of a noxious weed;

1 (h) The extent to which the project uses the principles
2 of integrated vegetation management and sound science; and

3 (i) Such other factors that the director determines to be
4 relevant.

5 (3) Nothing in this section shall be construed to relieve
6 control authorities of their duties and responsibilities under the
7 Noxious Weed Control Act or the duty of persons to control the
8 spread of noxious weeds on lands owned and controlled by him or
9 her.

10 (4) The Department of Agriculture may adopt and
11 promulgate necessary rules and regulations to carry out this
12 section.

13 Sec. 6. Section 2-958, Revised Statutes Supplement,
14 2002, is amended to read:

15 2-958. (1) ~~There is hereby authorized to be established~~
16 ~~a~~ A noxious weed control fund may be established for each control
17 authority, which fund shall be available for expenses authorized to
18 be paid from such fund, including necessary expenses of the control
19 authority in carrying out its duties and responsibilities under the
20 Noxious Weed Control Act. The weed control superintendent within
21 the county shall (a) ascertain and tabulate each year the
22 approximate amount of land infested with noxious weeds and its
23 location in the county, (b) ascertain and prepare all information
24 required by the county board in the preparation of the county
25 budget, including actual and expected revenue from all sources,
26 cash balances, expenditures, amounts proposed to be expended during
27 the year, and working capital, and (c) transmit such information
28 tabulated by the control authority to the county board not later

1 than June 1 of each year.

2 (2) ~~There is hereby created the~~ The Noxious Weed Cash
3 Fund is created. The fund shall consist of proceeds raised from
4 fees imposed for the registration of pesticides and earmarked for
5 the fund pursuant to section 2-2634, funds credited or transferred
6 pursuant to sections 81-201 and 81-201.05, any gifts, grants, or
7 donations from any source, and any reimbursement funds for control
8 work done pursuant to subdivision (1)(b)(vi) of section 2-954. An
9 amount from the General Fund may be appropriated annually for the
10 Noxious Weed Control Act. The fund shall be administered and used
11 by the director to maintain the noxious weed control program and
12 for expenses directly related to the program. Any money in the
13 fund available for investment shall be invested by the state
14 investment officer pursuant to the Nebraska Capital Expansion Act
15 and the Nebraska State Funds Investment Act.

16 ~~On or before July 15, 2001, the State Treasurer shall~~
17 ~~transfer fifty thousand dollars from the Noxious Weed Cash Fund to~~
18 ~~the Livestock Waste Management Cash Fund. On or before July 15,~~
19 ~~2002, the State Treasurer shall transfer fifty thousand dollars~~
20 ~~from the Noxious Weed Cash Fund to the Livestock Waste Management~~
21 ~~Cash Fund.~~

22 Sec. 7. Section 81-201, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 81-201. The Department of Agriculture shall have power
25 (1) to encourage and promote, in every practicable manner, the
26 interest of agriculture; (2) to promote methods of conducting the
27 industry of agriculture with a view to increasing the production
28 and facilitating the distribution thereof at the least cost; (3) to

1 collect and publish statistics relating to the production and
2 marketing of agricultural products, so far as such statistical
3 information may be of value to the agricultural and allied
4 interests of the state, and to cooperate with the federal
5 government in the matter of collecting and publishing such
6 statistical information; (4) to publish and distribute the Weeds of
7 the Great Plains book Nebraska Weed Book and the Nebraska Insect
8 Book and supplemental inserts thereto, for sale and distribution to
9 the public. ~~for an amount not to exceed the cost of publication~~
10 ~~and distribution.~~ All money collected from the sale of the
11 publications shall be ~~paid~~ remitted to the State Treasurer and
12 ~~deposited in the Weed and Insect Books Cash Fund~~ credited as
13 provided in section 81-201.05; (5) to inquire into the causes of
14 contagious, infectious, and communicable diseases among domestic
15 animals and the means for the prevention and cure of the same; (6)
16 to execute and enforce all laws relating to matters within its
17 jurisdiction and to adopt necessary rules and regulations for the
18 administration and enforcement of such laws; and (7) to employ
19 special investigators who shall be appointed deputy state sheriffs
20 by the Governor and who shall, upon qualifying for such office,
21 possess all the powers which attach to such office, except that
22 their powers and duties shall be restricted to the enforcement of
23 the laws of the State of Nebraska within the jurisdiction of the
24 Department of Agriculture.

25 Sec. 8. Section 81-201.05, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 81-201.05. (1) The Weed Book Cash Fund is created. Any
28 money in the Weed Book and Insect Books Cash Fund on the effective

1 date of this act shall be transferred to the Weed Book Cash Fund.
2 Upon such transfer, the following amounts shall be transferred from
3 the Weed Book Cash Fund: (a) Twenty-five thousand dollars to the
4 Noxious Weed Cash Fund; and (b) thirty-seven thousand eight hundred
5 dollars to the Plant Protection and Plant Pest Cash Fund. On July
6 1, 2005, July 1, 2006, July 1, 2007, July 1, 2008, and July 1,
7 2009, if there are sufficient funds available, twenty-five thousand
8 dollars shall be transferred from the Weed Book Cash Fund to the
9 Noxious Weed Cash Fund. Any money in the Weed Book Cash Fund
10 available for investment shall be invested by the state investment
11 officer pursuant to the Nebraska Capital Expansion Act and the
12 Nebraska State Funds Investment Act.

13 (2) The sale price of each Weeds of the Great Plains book
14 sold by the Department of Agriculture shall be credited as follows:

15 (a) Seventy-five percent to the Weed Book Cash Fund to
16 aid in defraying the cost of publishing, preparing, and
17 distributing such books and any supplemental inserts to such books;
18 and

19 (b) Twenty-five percent to the Noxious Weed Cash Fund.

20 ~~There is hereby created a fund to be known as the Weed and Insect~~
21 ~~Books Cash Fund. All money credited to the fund shall be used by~~
22 ~~the Department of Agriculture to aid in defraying the cost of~~
23 ~~publishing, preparing, and distributing the Nebraska Weed Book, the~~
24 ~~Nebraska Insect Book, and any supplemental inserts to such books.~~
25 ~~Any money in the fund available for investment shall be invested by~~
26 ~~the state investment officer pursuant to the Nebraska Capital~~
27 ~~Expansion Act and the Nebraska State Funds Investment Act.~~

28 Sec. 9. Original sections 2-945.01, 2-953, 2-954,

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1 81-201, and 81-201.05, Reissue Revised Statutes of Nebraska, and
2 section 2-958, Revised Statutes Supplement, 2002, are repealed.